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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,402	12/28/2001	Hitoshi Matsumoto	VX012397 PCT	3876
21369	7590	12/19/2006		
POSZ LAW GROUP, PLC 12040 SOUTH LAKES DR. SUITE 101 RESTON, VA 20191			EXAMINER JAGOE, DONNA A	
			ART UNIT 1614	PAPER NUMBER
			MAIL DATE 12/19/2006	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/019,402	MATSUMOTO ET AL.	
	Examiner	Art Unit	
	Donna Jagoe	1614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 30 November 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 27-30, 32-40 and 42-49.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Applicant has proposed to amend the claims to a black currant anthocyanin-containing food composition that monosaccharide is not found. This places a new limitation that would require further consideration and/or search of such a limited invention.

Continuation of 11. Applicant asserts that claims 42-49 were not rejected. The following is reiterated from the final office action: Regarding new claims 42-49, the claims are rejected on the same grounds as the current grounds of rejection for the reasons indicated in the stated grounds of rejection. The anthocyanin compositions of claims 42-49 appear to be the same. Regarding applicants' assertion that Nakmedov does not disclose or suggest a composition which comprises 5 to 25% by weight of black currant anthocyanin, Nakmedov refers to "Marcs", the residue remaining after the fruit has been pressed. Although applicant refers to this as "waste", the marcs of Nakmedov meets the limitations of the claim. Regarding Lawhon, applicant states that the instant invention organic acid content can be reduced without the use of an ion exchange column. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, then the claim is unpatentable even though the prior art product was made by a different process." In response to applicant's argument that there is no suggestion to combine the references, In this case, the references identify the common problem of concentrating fruit juice and since one reference gives specific example of single critical parameter, the amount of solids left, and the amount of delphinidin in the composition and provides explicit guidance tying that parameter to key parameters of the second reference, concentrating the fruit juice with a reverse osmosis process motivated by the desire to retain flavor and antioxidants in the juice/food. It is therefore reasonable to conclude that the strength of correlation between references gives rise to reasonable expectation of success from combining them. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The rejection of claims 27-30 and 32-40 and 45 made in the paper mailed June 1, 2006 under 35 U.S.C. §112 2nd paragraph is maintained and hereby repeated for the reasons set forth in the previous office action.

Ardin H. Marschel 12/13/06
ARDIN H. MARSCHEL
SUPERVISORY PATENT EXAMINER